

# **Presumptions for constitution of damage responsibility**

## **Abstract**

The aim of this rigorous thesis is to bring closer the presumptions for the constitution of damage responsibility. In terms of time, the first presumption is the breach of duty. Therefore, the first chapter deals with the breach of duty, focusing more closely on violation of good morals, breach of law and breach of contractual obligations. In conclusion, the first chapter focuses on circumstances excluding unlawfulness, especially necessity and self-defence.

The second chapter deals with the second presumption for the constitution of damage responsibility that is damage. This chapter divides the damage to material damage and immaterial damage. The material damage is also mentioned with its individual components, which are the real damage and the lost profit. And for immaterial damage, some of its provisions are specified in special laws. The second chapter also covers the civil legislation in the Federal Republic of Germany, specifically contained in the German Civil Code.

The third chapter deals with the third presumption for the constitution of damage responsibility, which is the cause between the breach of duty and the consequent damage. The cause to the difference from the previous two presumptions is almost not described in the Civil Code. For this reason, it is mentioned through case law and legal theory. This chapter focus on two theories of causes, namely the theory of condition and the theory of adequate causal relationship. Further, the third chapter also shows the practical situation where are more relevant causes. And the conclusion of the third chapter reflects the loss of chance.

The fourth chapter deals with culpability, which is unlike the previous three presumptions for the constitution of damage responsibility not always necessary. However, the culpability must be considered when we are talking about subjective damage responsibility. Conversely, in the case of objective damage responsibility, the culpability is not considered. The fourth chapter therefore deals with two forms of culpability, namely intention and negligence. Finally, there is a change from the previous Civil Code, especially the responsibility for coincidence.

## **Key words:**

damage, presumptions, responsibility